

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ATLANTIC UNION COLLEGE

v.

**BOARD OF ASSESSORS OF
THE TOWN OF LANCASTER**

Docket Nos. F324281-F324292,
F326402-F326413,
F329370-F329381

Promulgated:
October 12, 2018

These are appeals heard under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Lancaster ("appellee" or "assessors") to abate taxes on certain parcels of real estate located in Lancaster owned by and assessed to Atlantic Union College ("appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal years 2014, 2015, and 2016 ("fiscal years at issue").

Commissioner Rose heard these appeals. Chairman Hammond and Commissioners Scharaffa and Good joined him in the decisions for the appellant. Commissioner Chmielinski dissented.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

David G. Saliba, Esq. for the appellant.

Ellen M. Hutchinson, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of testimony and exhibits offered into evidence at the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2013, January 1, 2014, and January 1, 2015, the relevant valuation and assessment dates for the fiscal years at issue, the appellant was the assessed owner of the 12 parcels of real estate at issue in these appeals (collectively "subject property").

For each of the fiscal years at issue, the appellant timely filed Forms 3 ABC and abatement applications for the subject property, which the assessors denied or deemed denied. The appellant seasonably filed Petitions Under Formal Procedure with the Board for the subject property for each of the fiscal years at issue. On the basis of its findings, the Board found and ruled that it had jurisdiction over the appeals for the fiscal years at issue.

The appellant presented its case through the testimony of the following witnesses: Dr. Carlyle Simmons, Trustee of the appellant; Dr. Avis Hendrickson, President of the appellant; Milton Montague, Security Director of the appellant; Leslie Aho, Physical Plant Manager of the appellant; and Silas McKinney, Chief Financial Officer and Vice President of Finance of the appellant.

At all times relevant to this appeal, the appellant was a private liberal arts college affiliated with the Seventh-day Adventist Church. The appellant's entire campus consisted of about 30 parcels, including the subject property. The subject property was used as follows: 2 parcels were parking lot or storage areas; 1 parcel was a combination of classrooms, a cafeteria, and residences; and the remaining 9 parcels were student and faculty housing. The appellant was incorporated in 1883 and has had a lengthy history of exemption from taxation pursuant to G.L. c. 59, § 5, Clause Third ("Clause Third"). In May of 2011, the appellant suspended its bachelor of arts degree program at the subject property after losing its accreditation because of financial hardship. The appellee began to tax the subject property in fiscal year 2013. Other parcels within the Atlantic Union College campus remain exempt.

Dr. Simmons testified that the appellant never lost its charter during the relevant time periods, and that college administration and facilities departments worked towards regaining accreditation during the suspension period between May of 2011 and August of 2015, when the appellant resumed its degree program at the subject property. Dr. Simmons testified that, after the suspension, he and the other members of the Board of Trustees immediately began communicating with the Massachusetts Department of Education ("MDOE") and the New

England Association of Schools and Colleges ("NEASC") to discern the specific steps required for the college to regain accreditation. He further testified that the appellant, in fact, hired a consultant to assist in the process of regaining accreditation. According to Dr. Simmons, the appellant "maintained constant administrative structure for the institution" through monthly administrative meetings with the subject property's caretakers, the financial director of the college, and the officers of the appellant's employees' union. The Board of Trustees also continued to meet quarterly, and Dr. Simmons testified that at those meetings, the officers discussed the financial state of the appellant, the maintenance and security measures in place to ensure the subject property's upkeep, "and of course . . . efforts to regain our accreditation."

Furthermore, Dr. Simmons testified, the appellant continued to provide certain programs at the subject property during its loss of accreditation period. First, the Thayer Performing Arts Center ("TPAC") continued to accept students into its music and performing arts programs under the auspices of the college. The Northeast Evangelism Training School ("NETS"), a certificate program designed to teach students the techniques and strategies of conducting Bible studies, evangelism, and healthy-living education, which began operating at the subject property in

2013, also continued to operate during the relevant time periods. The Adult Education Program also continued operating during this time. Finally, the Teach Out Program, which began shortly after accreditation ceased at the college, enabled nursing students who were in the process of completing their degrees to continue their studies at neighboring Wachusett Community College while some of them continued to live at the subject property. The appellant also provided some professors and others who were employed by the appellant, as well as some students engaged in the Teach Out Program, with continued living quarters at the subject property during the relevant time periods.

Moreover, Dr. Simmons and Dr. Hendrickson both testified that the appellant's academic office was in continual operation to assist current students by providing housing, distributing transcripts, and providing other business functions. The appellant also continued to maintain the entire campus by paying all taxes, utilities, and insurance fees, and providing landscaping, maintenance, and repairs to the subject property. Dr. Hendrickson testified that when she began her employment with the appellant, on January 1, 2015, that the subject property was being continuously occupied by the appellant, despite the suspension of granting degrees. She further testified that the suspension of admitting new students was

temporary, and that the appellant never intended to cease its operations at the subject property during the relevant time periods. The appellant began admitting new students again in August of 2015.

Mr. Montague, Security Director of the appellant, corroborated the testimony of Dr. Simmons and Dr. Hendrickson that the college continued to maintain the campus, and he further testified that the appellant continued to patrol and provide security to all major parts of the campus during the relevant time periods. He also testified that employees of the appellant continued to live on campus during the relevant time periods, including the groundskeeper and the chief financial officer of the college, and that some students also continued to live on campus even during the suspension of degree-granting authority. Even with respect to the parts of campus where students were not residing during the suspension, the college continued to secure the buildings and to provide heating and electrical service to the campus as well as landscaping and snow removal and tending to issues with the subject property as they occurred. Mr. Aho, the Physical Plant Manager of the appellant, also corroborated the testimony regarding the upkeep and repairs made to the subject property at all relevant time periods, and he further testified to the proactive steps that he and the maintenance department took to respond to specific issues,

including suspected mold in the basement area of one of the buildings located on the subject property. Finally, Mr. McKinney, the Chief Financial Officer and Vice President of Finance of the appellant, also testified that the appellant continued to maintain and secure the subject property during the relevant time periods.

The appellee presented as a witness Debra Sanders, the principal assessor for the appellee. She testified to the rationale behind assessing the subject property, explaining that by the start of fiscal year 2013, the appellant still had not regained accreditation, and the board of assessors "wanting to be as fair as possible" reviewed the exemption as follows:

So the board looked at it in two ways. They looked at the educational buildings, and then they looked at the residential buildings. They felt that the educational buildings should be exempt, but as far as the residential buildings, they felt that because there was no students in those buildings that they needed to be taxed.

On the basis of the evidence of record, the Board found that the appellant continued to operate in furtherance of its charitable purpose during the relevant time periods, despite the suspension of its ability to confer academic degrees. The TPAC, NETS, and Adult Education programs continued to operate on campus, as the appellant continued to provide housing to those students participating in the Teach Out Program in conjunction with neighboring Wachusett Community College. Moreover, the

appellant's academic offices remained open to assist students with finding housing and other academic support during the suspension period. Furthermore, the appellant regarded its loss of accreditation as a temporary phase. The appellant continually strove to reopen and took active steps towards that goal, including communications with MDOE and NEASC as well as monthly Board of Trustees meetings. These active steps included maintenance of the subject property; during the relevant time, the appellant continued to maintain the subject property by providing repairs, security, and snow removal services, as well as housing to professors, employees, and students. The Board found it illogical that the appellee concedes that the academic portions of the campus should continue to be exempt during the accreditation suspension and yet taxed the residential portions that were no less utilized or maintained during the relevant time periods.

The Board found and ruled that the appellant's occupancy of the subject property was in furtherance of its educational purpose, which is a traditionally charitable purpose. Therefore, the Board found and ruled that the subject property was entitled to exemption.

Accordingly, the Board issued decisions abating the taxes at issue.

OPINION

Clause Third provides that real estate owned by a "charitable organization and occupied by it or its officers for the purposes for which it is organized" is exempt from taxation. Clause Third defines a charitable organization as "a literary, benevolent, charitable or scientific institution or temperance society incorporated in the commonwealth." "For purposes of the local property tax exemption, the term 'charity' includes more than almsgiving and assistance to the needy." ***New England Legal Found. v. Boston***, 423 Mass. 602, 609 (1996). "A charity, in the legal sense, may be more fully defined as a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government." ***Boston Symphony Orchestra, Inc. v. Assessors of Boston***, 294 Mass. 248, 254-55 (1936) (quoting ***Jackson v. Phillips***, 14 Allen 539, 556 (1867)).

As observed by the Appeals Court, the Supreme Judicial Court in ***New Habitat, Inc. v. Tax Collector of Cambridge***, 451 Mass. 729 (2008) provided "an interpretive lens through which we now view" charitable exemption cases. ***Mary Ann Morse***

Healthcare Corp. v. Assessors of Framingham, 74 Mass. App. Ct. 701, 703 (2009). As the Appeals Court explained,

[t]he number of individuals receiving services, whether they are from diverse walks of life, the fees charged to those individuals, and the relationship between the service fees and the cost of those services to the provider - all these are factors that inform a decision under the community benefit test; where however an organization is found to be traditionally charitable in nature, these factors play "a less significant role in our determination of its charitable status" for purposes of property tax exemption.

Id. at 704 (quoting **New Habitat**, 451 Mass. at 737).

The Supreme Judicial Court has long recognized that "bringing [recipients'] minds or hearts under the influence of education" is a traditionally charitable purpose. **Boston Symphony Orchestra**, 294 Mass. at 254-55; **Assessors of Boston v. Garland Sch. of Home Making**, 296 Mass. 378 (1937). Therefore, because education is a traditionally charitable purpose, factors like fees and the number of people benefitted by the appellant's programs are less important in determining the appellant's charitable status. See **New Habitat**, 451 Mass. at 736-37 (finding an organization to be charitable where it had small number of beneficiaries but traditionally charitable purposes and methods) (citing **Dover v. Dominican Fathers Province of St. Joseph**, 334 Mass. 530, 539 (1956)). Instead, a court should "consider whether the number of an organization's beneficiaries helps to advance the organization's charitable purpose." **New**

Habitat, 451 Mass. at 737 (citing **New England Legal Found.**, 423 Mass. at 612 ("at any given moment an organization may serve only a relatively small number of persons" but still be found to be charitable if operating according to its stated charitable purpose"))).

In the instant appeal, the appellant had lost its accreditation prior to the start of the fiscal years at issue, and so the majority of its students had sought other academic opportunities. However, the Board found credible the witnesses' testimony regarding the appellant's efforts to regain its accreditation, including meetings with the MDOE and NEASC as well as monthly Board of Trustees meetings. The appellant never lost its charter during the relevant time periods, and it kept its academic offices open to continue to assist students during the suspension period. Some employees and students of the appellant continued to reside in campus housing, the former continuing to maintain the subject property and the latter furthering their academic careers through initiatives like Teach Out with a neighboring college. Moreover, the appellant continued to offer and teach students in its non-degree and certificate education programs, specifically TPAC, NETS, and the Adult Education Program. The Board thus found and ruled that the subject property was still being operated as part of an educational institution, a traditionally charitable endeavor,

and that the subject property was being no less utilized and maintained than the other campus parcels, which the appellee concedes were exempt. The fact that a small number of students were served during the suspension period is not of concern when the organization is traditionally charitable in nature. See **New Habitat**, 451 Mass. at 737.

When the property at issue involves a residential facility owned by a charitable organization, a determination must be made as to whether the property is occupied by the residents in their individual capacities or by the organization itself. **Mary Ann Morse Healthcare Corp.**, 74 Mass. App. Ct. at 704. The Supreme Judicial Court has specifically found that the occupation of dormitories is not by the individual students but by the charitable organization. "Dormitories, dining halls and boarding houses intended primarily for and actually devoted to the use and benefit of students attending incorporated institutions of learning are exempt from taxation." **Springfield YMCA v. Assessors of Springfield**, 284 Mass. 1, 6 (1933) (citing **Phillips Academy v. Andover**, 175 Mass. 118, 125 (1900)). See also **M.I.T. Student House, Inc. v. Assessors of Boston**, 350 Mass. 539, 542 (1966) (finding that a "student house" that was occupied by needy students who paid a small rental fee to the taxpayer was like "a 'dormitory or boarding house'" and that the occupation of such is by the corporation itself and not the residents, "just as the

occupation of a college dormitory [] is that of the institution of learning"); **Franklin Square House v. Boston**, 188 Mass. 409, 411 (1905) ("The occupation of the property is that of the corporation itself, and not of those to whom it affords a home, just as the occupation of a college dormitory or refectory is that of the institution of learning rather than that of its students.").

So long as a property is occupied by the charitable organization for the purpose for which it was organized, the occupancy will satisfy Clause Third. See **Mary Ann Morse Healthcare Corp.**, 74 Mass. App. Ct. at 706 (ruling that the provision of housing to elderly residents was consistent with organization's charitable purpose). The Board found that the use of the subject property to house employees of the appellant who were continuing to maintain the subject property while the administration was working towards regaining accreditation, and by students who were continuing to pursue their academic degrees at another institution while their degrees from the appellant were on hold, was consistent with and in furtherance of the appellant's charitable purposes. The endeavors of the employees and the students contributed to the promotion of the academic program and therefore the charitable purpose of the appellant. See, e.g., **The Sterling and Francine Clark Art Institute, Inc. v. Assessors of the Town of Williamstown**, Mass. ATB Findings of Fact and Reports 2015-581, 591.

On the basis of its findings, the Board ruled that the appellant continued to operate the subject property in furtherance of its charitable purpose of education. Therefore, the Board found that the subject property satisfied Clause Third during the relevant time periods.

Accordingly, the Board issued decisions for the appellant in these appeals.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: _____
Clerk of the Board